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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 GLEN DELL COLLINS,) Case No. CV 14-2404-GW (JPR)
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12) Petitioner,)
13)
14) v.) ORDER ACCEPTING FINDINGS AND
15) RECOMMENDATIONS OF U.S.
16) MAGISTRATE JUDGE
17)
18) ERIC ARNOLD, Warden,)
19)
20) Respondent.)
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16 The Court has reviewed the Petition, records on file, and
17 Report and Recommendation of U.S. Magistrate Judge. See 28
18 U.S.C. § 636. On February 27, 2017, Petitioner filed objections
19 to the R. & R. He primarily simply repeats or summarizes
20 arguments from the Petition and Traverse. Two objections require
21 brief discussion, however.

22 First, as the Magistrate Judge pointed out in the R. & R.,
23 the relevant law concerning procedural default changed between
24 when the Court accepted the Magistrate Judge's first R. & R. –
25 recommending that four of Petitioner's five claims be dismissed
26 as procedurally barred – and when she issued her second,
27 recommending that ground four of the Petition be denied on the
28 merits. (See Dec. 15, 2015 R. & R. at 7-11.) She carefully

1 explained in the second R. & R. why that new law, Lee v. Jacquez,
2 788 F.3d 1124 (9th Cir. 2015), was distinguishable and did not
3 alter her earlier conclusion that most of Petitioner's claims
4 were procedurally barred. (See Dec. 15, 2015 R. & R. at 7-11.)
5 Petitioner contends that under Lee, his claims in fact are not
6 procedurally barred. (Objs. at 1.) Even if that were true,
7 however, the U.S. Supreme Court subsequently overturned Lee and
8 ruled that the cases upon which the Magistrate Judge originally
9 relied were correct. See Johnson v. Lee, 136 S. Ct. 1802, 1804
10 (2016) (per curiam); (Oct. 2, 2014 R. & R. at 7-12). Thus, Lee
11 does not help Petitioner.

12 Second, Petitioner argues that the "prosecution blatantly
13 withheld exculpatory evidence from the defense in the form of
14 preliminary hearing transcripts." (Objs. at 1.) But that claim
15 is nowhere to be found in the Petition. Rather, Petitioner
16 argued in ground four that the prosecution withheld a "certified
17 probation report." (Pet. at 6; see also Pet. Supp. Mem. at 2,
18 7.) For the reasons stated in the most recent R. & R. at pages
19 12 to 16, it did not. Even if the Court had discretion to
20 consider a habeas claim, as opposed to argument, raised for the
21 first time in objections to an R. & R., see Akhtar v. Mesa, 698
22 F.3d 1202, 1208 (9th Cir. 2012) (court must exercise discretion
23 in refusing to consider new arguments raised in objections to
24 magistrate judge's report and recommendation), Petitioner's new
25 claim has not been exhausted in state court and therefore is not
26 appropriate for review, see Marquez-Ortiz v. Sullivan, No. SACV
27 08-552 ABC (FFM), 2012 WL 294741, at *1 (C.D. Cal. Feb. 1, 2012)
28 (declining to consider habeas petitioner's additional claims

1 raised for first time in objections to report and recommendation
2 in part because not exhausted in state court).

3 The Court accepts the findings and recommendations of the
4 Magistrate Judge. The remaining claim of the Petition, ground
5 four, is DENIED and this action is DISMISSED with prejudice.

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7 DATED: June 6, 2017



GEORGE H. WU
U.S. DISTRICT JUDGE